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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LEWIS E. WALKER,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-163 & 80-220

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

These matters, the consolidated appeals from regulatory order No. 80-477 (PCHB No. 80-163) and order No. 80-639 (PCHB No. 80-220), came before the Pollution Control Hearings Board, David Akana, presiding, at a formal hearing in Bellingham on December 4, 1980.

Respondent was represented by Laura E. Eckert, assistant attorney general; appellant appeared pro se.

Having heard or read the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes

1 these

2 FINDINGS OF FACT

3 I

4 Lewis E. Walker, appellant, is the holder of Well Drillers License  
5 No. 0940 issued by the Washington State Department of Ecology,  
6 respondent. Appellant is located in Everson, Washington, and has  
7 conducted well drilling operations in Whatcom and Skagit counties.

8 II

9 Respondent is the agency with jurisdiction to issue, regulate, and  
10 revoke well drillers' licenses within Washington State. Respondent is  
11 also given the powers to make and administer appropriate rules and  
12 regulations governing water well construction.

13 III

14 The water wells which involve these appeals are "dug" wells  
15 intended for domestic purposes. The regulations require that such  
16 wells be constructed to seal the annular space between the undisturbed  
17 native material of the upper well hole and liner to at least 18 feet,  
18 or within 3 feet of the bottom in wells that are less than 21 feet in  
19 depth. A minimum of 6 inches of sealing material must be placed in  
20 the annular space.<sup>1</sup>

21  
22 1. WAC 173-160-180 provides:

23 SEALING OF DUG WELLS. The surface curbing of all dug  
24 wells shall be constructed to effectively seal the  
25 annular space between the undisturbed native material  
26 of the upper well hole and the concrete tile, steel  
pipe or liner to a depth of at least 18 feet or  
within 3 feet of the bottom in wells that are less  
than 21 feet in depth.

27 FINAL FINDINGS OF FACT,  
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IV

One purpose of the regulation is to prevent entry of contaminants into the aquifer that may result from drilling an opening in the ground. The required width and depth for sealing is related to that distance required for coliform removal. Where the geology is such that a seal would not be useful, as in the case of large pebbles or coarse gravel, advice regarding sealing may be sought from respondent prior to well completion. A high water table may also make useless the need for a seal. In any event, respondent requires well drillers to comply with the regulations or obtain permission to vary from them if conditions so justify.

V

As a result of complaints from the Whatcom County Health Department, respondent attempted to evaluate six wells drilled by appellant. The evaluation included a review of the water well reports filed by appellant for the six wells in question, and field examinations by respondent's employees of five wells. One well

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1. Cont.

(1) In all dug wells, other than a buried slab type, concrete at least 6 inches thick shall be used as sealing material. If wooden cribbing is used as a retaining wall to provide for a concrete surface curbing, the cribbing shall be removed from the hole after the concrete has set.

(2) In buried slab type well construction, a steel casing shall extend at least 6 inches beyond the slab into cement grout and the remaining annular space to land surface shall be filled with bentonite or puddled clay (see Figure 4 at the end of this chapter.)

could not be located by the description given.

## VI

From the evaluation made, respondent determined that construction of the six wells were not adequate and issued a regulatory order (No. 80-477) requiring appellant to properly seal wells of Sears, VanderHook, Jamesson, Hubbard, Wagner, and Mezo within 30 days after receipt of the order.<sup>2</sup> From this requirement, appellant appealed.

## VII

After ascertaining that appellant did nothing to comply with the above regulatory order, respondent issued another order (No. 80-639) suspending appellant's license No. 0940, revoking the license 30 days thereafter, and providing certain conditions which would relieve appellant from the effect of the order. Appellant appealed this order

## VIII

The Sears well could not be located by respondent's employees according to the information filed. However, the well report filed by appellant showed a 27 foot deep well with a 10 feet water level sealed to a depth of 14 feet. Although appellant left forms for the client to complete the surface seal, he did not intend to direct or supervise the completion of the seal.

## IX

The VanderHook well was observed to have concrete poured around the top of the well. The well was dug to a 39 foot depth and was

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2. At hearing respondent withdrew any allegation with respect to the Allen well thereby leaving six wells at issue in this matter.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 sealed to a depth of 6 feet according to appellant's well report. The  
2 water level was at 29 feet below surface level. Respondent contends  
3 that the seal should have gone to 18 feet below the surface.

4 X

5 The Jamesson well had a poured concrete seal at the top of the  
6 well. The well was dug to a depth of 20 feet and sealed to a depth of  
7 6 feet. The water level was observed at 10 feet below surface level.  
8 Based upon the amount of concrete used, respondent estimated a seal  
9 reaching 2 feet in depth. Appellant estimated a 6 foot deep seal.  
10 Based on the regulations respondent contends that the seal should have  
11 gone to at least 13 feet below the surface. (Three feet below the  
12 water level.)

XI

14 The Hubbard well was believed by respondent, on secondhand  
15 information, to have no surface seal installed. However, the well  
16 report shows a 6 foot deep seal. The well is 21 feet deep and has a  
17 water level of 14 feet. Respondent contends that an 18 foot deep seal  
18 should have been constructed.

19 XII

20 The Wagner well was dug to about a 30 foot depth and exhibited  
21 water at the 21 foot level. According to appellant, the surface seal  
22 was to be completed by the owner. Appellant did not intend to direct  
23 or supervise the installation of the seal. The seal was not evident  
24 upon respondent's inspection. Respondent contends that appellant is  
25 responsible for sealing the well to a depth of 18 feet.

XIII

The Mezo well completed in the spring of 1980 was dug to about 41 feet and showed water at a depth below 30 feet. According to appellant, the surface seal was to be completed by the owner. Appellant did not intend to direct or supervise the installation of the seal. The seal was not put in when respondent inspected the well. Respondent contends that the well should have been sealed to a depth of 18 feet.

XIV

Appellant was responsible for the proper construction of the Sears, Vanderhook, Jamesson, Hubbard, Wagner, and Mezo wells. These wells showed either no seals or inadequate seals when compared to the department's requirements in chapter 173-160 WAC. Appellant was aware of the department's regulations applicable to the wells before he dug them.

XV

Appellant contends that he meets the water well construction practice with respect to sealing requirements generally followed in Whatcom County. Appellant has recommended to respondent that the regulations in WAC 173-160 be amended to incorporate different standards. It is also contended that other well drillers in the county do not comply with WAC 173-160 and appellant has been singled out for enforcement by respondent and the Whatcom County Health Department.

XVI

Appellant's pricing technique for drilling wells has apparently left him little or no profit in this business. He has cut his rates in order to get work and will lose money if he had to return to the wells in question to provide seals which would be satisfactory to the respondent. In each case, appellant's contract with the well owner appears to obligate him to provide a seal.

XVII

Appellant has not requested advice from the respondent with respect to the wells in question where strict compliance with the regulations were believed impractical (WAC 173-160-020(1)). Presumably this may yet be requested.

XVIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

RCW 18.04.180 provides that no well drillers license is required by an individual owner personally drilling a well for specified uses, including domestic uses, or by

(2) Any individual who performs labor or services for a water well contractor in connection with the drilling of a well at the direction and under the supervision of a licensed operator.

The statute simply sets forth instances in which licenses are not required.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

II

Appellant was shown to have drilled six wells without providing the seals required by WAC 173-160-180. Accordingly, Department of Ecology order No. 80-477 should be affirmed. Pursuant to RCW 18.104.130, the effect of the order was stayed pending completion of the instant review process.<sup>3</sup> After the Board's order becomes final, appellant must comply with the Department of Ecology order No. 80-477 according to its terms.

III

Appellant was shown to have violated WAC 173-160-180 which is a lawful rule or regulation of the Department of Ecology. This showing is sufficient in itself to support the order (No. 80-639) suspending and revoking appellant's license. RCW 18.104.110. However, respondent apparently has elected to afford appellant an opportunity to take corrective action by properly sealing or properly abandoning the wells in question within 30 days after receipt of the order (No. 80-639). The order was reasonable in scope and effect at the time of its issuance assuming the regulatory order No. 80-477 was not stayed. Because order No. 80-477 was stayed by an appeal, appellant should be afforded a reasonable period of time to comply with it. Order No.

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3. Department of Ecology order No. 80-477 cites RCW 43.27A.190 as authority for the order. That statute applies to what was formerly the Department of Water Resources whose duties and functions have been transferred to the Department of Ecology. The Department of Ecology was and is the only agency to administer ch. 18.104 RCW and that statute provides for orders such as No. 80-477.

1 80-639 should not be effective until such reasonable period of time  
2 has elapsed.

3 IV

4 Appellant has made many and various requests for relief which are  
5 beyond the authority of this Board to grant.

6 V

7 Appellant contends that he has been singled out for enforcement  
8 purposes. Respondent brought this action against appellant because of  
9 complaints received by it. There was no indication that respondent  
10 selected appellant for enforcement on the basis of some prohibited  
11 ground. See The Frame Factory v. Department of Ecology, 21 Wn App. 50  
12 (1978).

13 VI

14 Any Finding of Fact which should be deemed a Conclusion of Law is  
15 hereby adopted as such.

16 From these Conclusions, the Board enters this  
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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER


ORDER

1. Department of Ecology order No. 80-477 is affirmed.


2. Department of Ecology order No. 80-639 is remanded.

DONE this 5<sup>th</sup> day of February, 1981.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

MARIANNE CRAFT NORTON, Member

  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER